



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Mary K. Prim, Esquire  
Mary K. Prim, PLLC  
Post Office Box 232  
Scott Depot, West Virginia 25560

JUL - 8 2016

Re: MUR 6812  
Penn Line Services, Inc.

Dear Ms. Prim:

On April 30, 2014, the Federal Election Commission (the "Commission") notified your client, Penn Line Services, Inc., of a complaint alleging that your client violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your client with a copy of the complaint.

After reviewing the allegations contained in the complaint, your client's response, and publicly available information, the Commission on June 14, 2016, found reason to believe that Penn Line Services, Inc. violated 52 U.S.C. § 30118(b)(3)(B) and (C) (formerly 2 U.S.C. § 441b(b)(3)(B) and (C)) and 11 C.F.R. § 114.5(a)(3) and (4), provisions of the Act and the Commission's regulations.<sup>1</sup> Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that Penn Line Services, Inc. has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

<sup>1</sup> On September 1, 2014, the Act was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

10044402135

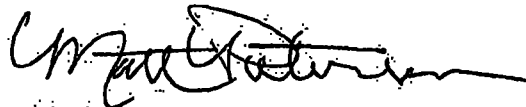
1604400136

If your client is interested in engaging in pre-probable cause conciliation, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>2</sup>

We look forward to your response.

On behalf of the Commission,



Matthew S. Petersen  
Chair

Enclosures

Factual and Legal Analysis

<sup>2</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Penn Line Services, Inc.

MUR: 6812

**I. INTRODUCTION**

Complainant, Jeffrey Richmond ("Richmond"), a former employee of Respondent Penn Line Services, Inc. ("Penn Line"), alleges that Penn Line unlawfully deducted \$11.51 from his pay and transferred the money to Laborers' International Union of North America ("LIUNA") and its local chapter, Laborers' International Union, Local 453 ("Local 453") (collectively, "the Unions") for political contributions to LIUNA's separate segregated fund ("SSF") before Richmond became a member of the Unions. Richmond also claims that Penn Line fired him for not authorizing additional deductions to the SSF, Laborers' International Union of North America PAC ("LIUNA PAC"). Penn Line does not deny the allegations, but it asserts that Richmond has been made whole through settlements in a West Virginia state court and before the National Labor Relations Board ("NLRB").

Based on the available information, the Commission finds reason to believe that Penn Line coerced contributions in violation of the Act and the Commission's regulations.

**II. FACTS**

Penn Line is a Pennsylvania corporation that operates a construction business in West Virginia. Penn Line Resp. at 1. Available information shows that LIUNA is an international labor organization, and the majority of its members are construction workers. Local 453, an affiliate of LIUNA, represents Penn Line workers. LIUNA PAC is an SSF connected with LIUNA. *See* Amended Statement of Organization (filed October 8, 2014).

1 On July 10, 2012, Orvil Walls, a Penn Line supervisor, hired Richmond as a  
2 driver/laborer. Jeffrey Richmond Aff. at 1 (Apr. 21, 2014) ("Richmond Aff."). Although Walls  
3 told Richmond over the phone that the position was a "union job," Richmond was not given an  
4 application to join Local 453. *Id.* at 1-2. When Richmond got his first paycheck around July 20,  
5 2012, he noticed several deductions labeled "Employee Assm" and "Employee Dedu." *Id.* at 2.  
6 Richmond called Jamie Gross of Penn Line's Payroll Department, who told Richmond that the  
7 deductions were union deductions. *Id.* The deductions included political contributions to  
8 LIUNA PAC, a state SSF called West Virginia Laborers District Council PAC, and an entity  
9 called Laborers Organizing Fund. Compl. at 2, Attach. 3; Penn Line Resp. at 2.

10 In July or August 2012, Richmond spoke with "a man" at Local 453's office about  
11 joining the union, who told him to have Penn Line contact Local 453 directly. Richmond Aff.  
12 at 3. Richmond relayed that instruction to Gross. *Id.* On or about October 1, 2012, Richmond  
13 received a union membership form in the mail from Gross. *Id.* Richmond signed the portion of  
14 the form to join the union because he claims Walls and other coworkers told him that union  
15 membership was required. *Id.* The union membership form included a payroll deduction section  
16 for political contributions to LIUNA PAC. That section stated that such deductions were  
17 voluntary, the individual could refuse to contribute without reprisal, the union could not favor or  
18 disadvantage the employee based on his or her refusal or the amount of the contribution, the  
19 contributions would be used for political expenditures or contributions to federal, state, or local  
20 elections, and the dollar amounts on the form were merely suggestions. *Id.*, Attach. 1.

21 Richmond submitted the completed union form, but he did not sign the section  
22 authorizing deductions to LIUNA PAC. Richmond Aff. at 3, Attach. 1. On October 15, 2012,  
23 Walls informed Richmond that his union form was being returned to him to authorize SSF

1 deductions, and that he had to do so. *Id.* The next day, Richmond told Walls that he would not  
2 authorize the deductions “for moral reasons,” and Walls told him that “it was up to [him].” *Id.*  
3 About three hours later, however, Walls told Richmond that he had been told that he could “take  
4 [Richmond] home” if he “would not join the Unions.”<sup>1</sup> *Id.* Richmond refused again, Walls took  
5 him home, and Penn Line fired him. *Id.* At the time Penn Line fired Richmond, it had deducted  
6 \$11.51 in unauthorized federal contributions to LIUNA PAC from his pay.<sup>2</sup>

7 Richmond filed two lawsuits following his termination — one against Penn Line in state  
8 court and another against Penn Line and Local 453 with the NLRB. Penn Line Resp. at 2. Both  
9 actions were resolved through settlement agreements. *Id.* In the state court settlement, Penn  
10 Line paid \$928.98 to Richmond and \$2,400 to his lawyers, but it did not admit liability. Penn  
11 Line Resp. at 2, Ex. B at 1, 3. In the NLRB settlement, Penn Line paid Richmond \$10,401.77  
12 (for back pay, medical expenses, uniforms, interest, and withheld union dues and political  
13 deductions). Penn Line Resp. at 2. Penn Line notes that the NLRB settlement is not an  
14 admission of liability. Penn Line Resp. at 2.

15 As part of the NLRB settlement, Penn Line agreed to take prospective remedial  
16 measures. Penn Line Resp. at 3. Penn Line agreed to stop coercing or deducting unauthorized  
17 political contributions to LIUNA PAC, to stop presenting employees with the Unions’ SSF  
18 authorization forms, to provide training to its field personnel, and to mail and post notices of  
19 employees’ federal labor rights at prominent sites at the company. Penn Line Resp. at 3, Ex. F.

---

<sup>1</sup> Presumably, Walls was referring to Richmond authorizing future SSF contributions because Richmond had already agreed to join the Unions.

<sup>2</sup> Penn Line deducted a total of \$827.47 in union dues/fees and political contributions to the Unions’ state and federal SSFs from Richmond’s wages during his employment.

16044042136

1 During the NLRB action, Penn Line also investigated whether there may have been other  
2 instances of unauthorized deductions, it determined there may have been one other instance, and  
3 it reimbursed that employee \$36.62. Penn Line Resp. at 3. Penn Line did not provide additional  
4 details regarding that employee's payroll deductions.

5 Penn Line does not deny the unauthorized payroll deductions, Walls's coercive actions  
6 seeking authorization for SSF deductions, or the wrongful termination. Penn Line Resp.  
7 Instead, Penn Line asserts that Richmond has been made whole by the two civil settlements and  
8 that it has instituted measures to prevent future occurrences. Penn Line Resp. at 3. Penn Line  
9 also notes that it offered Richmond his job back, but he refused. *Id.* at 2, 3.

10 **III. LEGAL ANALYSIS**

11 Under the Federal Election Campaign Act of 1971, as amended (the "Act") and the  
12 Commission's regulations, labor organizations are prohibited from making a contribution in  
13 connection with a federal election, and a political committee is prohibited from knowingly  
14 accepting or receiving such contributions. 52 U.S.C § 30118(a) (formerly 2 U.S.C. § 441b(a));<sup>3</sup>  
15 11 C.F.R. § 114.2(b), (d). Labor organizations are permitted to establish and solicit political  
16 contributions to an SSF. 52 U.S.C § 30118(b)(2)(C) (formerly 2 U.S.C. § 441b(b)(2)(C));  
17 11 C.F.R. § 114.1(a)(2)(iii). A labor organization or its SSF may only solicit contributions from  
18 the organization's members and their families. 52 U.S.C § 30118(b)(4)(A)(ii) (formerly  
19 2 U.S.C. § 441b(b)(4)(A)(ii)); 11 C.F.R. § 114.5(g)(2).

20 An SSF is prohibited from making contributions or expenditures "by utilizing money or  
21 anything of value secured by physical force, job discrimination, or financial reprisals, or the

<sup>3</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

041120444001

1 threat of force, job discrimination, or financial reprisals; or by dues, fees, or other moneys  
2 required as a condition of membership in a labor organization or as a condition of employment  
3 . . . ." 52 U.S.C § 30118(b)(3)(A) (formerly 2 U.S.C. § 441b(b)(3)(A)); *see also*  
4 11 C.F.R. § 114.5(a)(1) (same). All contributions to an SSF must be voluntary and without  
5 coercion. *See* 52 U.S.C § 30118(b)(3) (formerly 2 U.S.C. § 441b(b)(3)); 11 C.F.R. § 114.5(a);  
6 *see also* Advisory Op. 2003-14 (Home Depot) (same).

7 A labor organization may use a payroll-deduction or check-off system to collect  
8 contributions to its SSF. *See generally* Advisory Opinion 2013-12 (SEIU and SEIU COPE) at 3.  
9 A contributor, however, must affirmatively authorize such payroll deductions from the  
10 contributor's wages. *Id.*

11 To ensure that contributions solicited for an SSF are voluntary, the Act and the  
12 Commission's regulations make it unlawful for any person to solicit a contribution to an SSF  
13 without informing the employee of the political purpose of the SSF and of the right to refuse to  
14 contribute to the SSF without reprisal. 52 U.S.C § 30118(b)(3)(B)-(C) (formerly 2 U.S.C. §  
15 441b(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(3)-(4)). The term "person" includes a corporation or  
16 a labor organization. 52 U.S.C § 30101(11) (formerly 2 U.S.C. § 431(11)). In addition, if the  
17 SSF or connected organization suggests a guideline for contribution amounts, the solicitation  
18 must state that the guideline is merely a suggestion, that the member is free to contribute more or  
19 less than the guideline suggests, and that the union will not favor or disadvantage anyone  
20 because of the amount of the contribution or a decision not to contribute. 11 C.F.R.  
21 § 114.5(a)(2), (5). A solicitation may be coercive if the requisite notices are not given. *See*  
22 Conciliation Agreement IV.7, MUR 5337 (First Consumers Nat'l Bank) (conciliating prohibited  
23 facilitation of national bank contributions to a state SSF).

11404440061

1 By its own admission, Penn Line deducted political contributions to LIUNA PAC from  
2 Richmond's pay without his affirmative authorization and without giving him the required  
3 notices. Penn Line eventually asked Richmond for permission, but it threatened his job when he  
4 refused, and it made good on that threat when Richmond did not obey. Therefore, the  
5 Commission finds reason to believe that Penn Line violated 52 U.S.C § 30118(b)(3)(B)-(C)  
6 (formerly 2 U.S.C. § 441b(b)(3)(B)-(C)) and 11 C.F.R. § 114.5(a)(3) and (4).<sup>4</sup> See Factual &  
7 Legal Analysis at 7, MUR 6621 (American Hotel & Lodging Assoc.) (trade association failed to  
8 inform solicitees of the political purpose of its SSF and the right to refuse to contribute without  
9 reprisal).<sup>5</sup>

<sup>4</sup> In light of this finding, the Commission does not evaluate whether Penn Line also facilitated the making of a contribution under 11 C.F.R. § 114.2(f)(2)(iv).

<sup>5</sup> Richmond also alleges that Penn Line violated 52 U.S.C § 30118(b)(3)(A) (formerly 2 U.S.C. § 441b(b)(3)(A)) by making a contribution secured by job discrimination and the threat of job discrimination. Section 30118(b)(3)(A) prohibits a separate segregated fund from using coerced contributions. See 52 U.S.C § 30118(b)(3)(A) (formerly 2 U.S.C. § 441b(b)(3)(A)) ("It shall be unlawful . . . for such a fund to make a contribution or expenditure . . ."). This provision does not appear to relate to Penn Line's actions at issue in this matter.